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**From:** Mintzer, Michael  
**Sent:** Fri 2/17/2017 1:57:58 PM  
**Subject:** BERA Dispute: Dispute Decision Official

David –

I am writing to confirm our telephone conversation of yesterday afternoon concerning the identity of the dispute decision official for the BERA dispute that was initiated by your letter to EPA dated December 22, 2016 on behalf of the NCG.

Among other issues in dispute, your letter stated as follows:

In addition to our substantive concerns with EPA's comments on the BERA, the NCG wants to discuss with EPA the identity and role of the EPA decision maker for disputes. This is similar to an issue we previously have discussed with EPA. The NCG reserves its rights with respect to this issue pending our further discussion with EPA on this matter.

The AOC at Section XV (Dispute Resolution), Paragraph 66 identifies the dispute resolution official as follows: “If the Parties are unable to reach an agreement within the Negotiation Period, the Chief of the Special Projects Branch of the Emergency and Remedial Response Division, EPA Region 2, will issue a written decision.” Michael Sivak has been Acting Chief of the Special Projects Branch since 2015 and has been the Acting Chief during the pendency of the current BERA dispute. In that role, he has become familiar with the issues under dispute and the positions of the respondents, Newtown Creek stakeholders and EPA on those issues. Michael Sivak met with the respondents as contemplated by the AOC on January 4, 2017, and is prepared to meet again on February 21, 2017, before a decision on the dispute would be made.

I recently informed you that Michael has been appointed as Chief of the Passaic, Hackensack, & Newark Bay Remediation Branch at EPA Region 2, and thus is no longer acting as Chief of the

Special Projects Branch. In our phone call of February 8, I told you that EPA believes it would be best, in view of Michael's familiarity with the Newtown Creek site and the issues in dispute, that he be the dispute official for the BERA dispute notwithstanding the designation in Paragraph 66 of the AOC that is quoted above. You told me today that the NCG respondents agreed that Michael Sivak could continue as the dispute decision official for the BERA dispute. It was further agreed by EPA and the NCG respondents that the request in your December 22, 2016 dispute letter to discuss with EPA the identity and role of the EPA decision maker with respect to the BERA dispute has been resolved by agreement between EPA and the NCG respondents and has thus been withdrawn by NCG from the dispute.

Please confirm by your email to me that NCG agrees that Michael Sivak will be the dispute decision official for the BERA dispute and that the issue raised in your December 22 letter has been resolved by agreement of EPA and the NCG Respondents.

*Michael A. Mintzer*

*Assistant Regional Counsel*

*U.S. Environmental Protection Agency, Region 2*

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